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this net of limitations that the courts must squarely face the question: what is the common law? *L. N. H.*

CORPORATIONS: THE CORPORATE ENTITY IN GOVERNMENT-OWNED CORPORATIONS—In *Commonwealth Finance Corporation v. Landis*[1] the court held that the United States Shipping Board Emergency Fleet Corporation could not claim immunity from the service of process on the grounds that it was a governmental agency, even though it might appear at the trial that the matter was one relating to which the corporation was clothed with attributes of sovereignty. In the more recent case of *Gould Coupler Company v. United States Shipping Board Emergency Fleet Corporation,*[2] the court went the whole length in holding that the Fleet Corporation was subject to suits in general, like any other corporation.

The United States, as well as any state thereof, is sovereign and cannot be sued without its consent.[3] The sovereign, in discharge of its functions, must commit their exercise to agencies selected for that purpose.[4] The agency chosen may be an individual or a corporation created as an appropriate means of executing the powers of government.[5] If the agency chosen is an individual, he assumes no personal liability for the acts done in exercise of the discretion conferred by law.[6] In the principal cases, Congress saw fit to commit a governmental function to a corporation in which practically all the shares of stock were owned by the United States government. If such a corporation is an integral part of the government it cannot be sued without the sovereign's consent.[7] But if the corporation does not become merged in the government and lose its separate entity, then the

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[1] (Nov. 7, 1919) 261 Fed. 440.

[2] (Dec. 9, 1919) 261 Fed. 716.

[3] Hill v. United States (1850) 9 How. 386, 13 L. Ed. 185; New Hampshire v. Louisiana (1882) 108 U. S. 76, 27 L. Ed. 656, 2 Sup. Ct. Rep. 176; Kawananakoa v. Polyblank (1907) 205 U. S. 349, 51 L. Ed. 834, 27 Sup. Ct. Rep. 526; State of Kansas v. United States (1906) 204 U. S. 331, 51 L. Ed. 510, 27 Sup. Ct. Rep. 388.

For a criticism of the theory of exempting the sovereigns from suit see Austin Tappan Wright, Government Ownership and the Maritime Lien, 7 California Law Review, 242; Harold J. Laski, The Responsibility of the State in England, 32 Harvard Law Review, 447; Chas. H. Weston, Actions Against the Property of Sovereigns, 32 Harvard Law Review, 266; The Davis (1869) 10 Wall. 15, 19 L. Ed. 875.

[4] Berman v. Minnesota State Agricultural Society (1904) 93 Minn. 125, 100 N. W. 732.

[5] McCulloch v. Maryland (1819) 4 Wheat. 316, 4 L. Ed. 579; Osborn v. Bank of the United States (1824) 9 Wheat. 738, 6 L. Ed. 204; California v. Pacific Railroad (1887) 127 U. S. 1, 32 L. Ed. 150, 8 Sup. Ct. Rep. 1073; Indiana v. United States (1892) 148 U. S. 148, 37 L. Ed. 401, 13 Sup. Ct. Rep. 564; Luxton v. North Bridge Company (1894) 153 U. S. 525, 38 L. Ed. 808, 14 Sup. Ct. Rep. 891.

[6] Marbury v. Madison (1803) 1 Cranch 137, 2 L. Ed. 60; Kendall v. United States (1845) 3 How. 87. 11 L. Ed. 506.

[7] Supra, n. 3.

mere fact that the government is a stockholder does not authorize it to exercise sovereign powers.[8] It would, therefore, seem that the obligation of a corporation's contracts and the rights of its creditors are in no way affected by the mere fact that the sovereign is the owner of the capital stock and is, therefore, entitled to the profits.[9]

The government had organized the corporation defendant in both principal cases, pursuant to the laws of the District of Columbia, enacted primarily to enable private corporations to be formed. It is to be noted that the function of this corporation was certainly in a large part commercial, and, though by no means clearly settled, it has been held that in suits involving the transaction by the government of private or commercial business, there is no right to assert sovereign immunity.[10] If this doctrine is to prevail, it would seem to furnish an argument for the soundness of the decision in the Gould Coupler Company case.[11] It is also significant that there was not apparent legal necessity for functioning through a corporation with regard to the business the defendant was to carry on.[12] That the government selected a private corporation as its agency in accomplishing the purpose of the shipping and other similar acts is certainly strong evidence that it intended the liabilities of that corporation to be no different

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[8] Bank of United States v. Planters Bank (1824) 9 Wheat. 904, 6 L. Ed. 244, in which Chief Justice Marshall said that "It is, we think, a sound principle that when a government becomes a partner in a trading company, it divests itself, so far as the transactions of that company are concerned, of its sovereign character, and takes that of a private citizen." In Panama Railroad and Steamship Line, 25 Op. Atty. Gen. 465, an eight-hour law for government employees was not considered applicable to employees of a corporation in which the United States government owned practically all the stock. See also Salas v. United States, infra, n. 10.

[9] Curran v. State of Arkansas (1853) 15 How. 304, 14 L. Ed. 705; Bank of Kentucky v. Wister (1829) 2 Pet. 318, 7 L. Ed. 437; Briscoe v. Bank of Kentucky (1837) 11 Pet. 257, 9 L. Ed. 709.

[10] The Davis, supra, n. 3. In Salas v. United States (1916) 234 Fed. 842, the court held that when the United States enters into a commercial business, it abandons its sovereign capacity, and is to be treated like any other corporation. Ballaine v. Alaska Northern Railroad (1919) 259 Fed. 183, is in accord with the above case, but is distinguishable on its facts. In the Ballaine case the government was the owner of the property and stock of the corporation, but was using this railroad for public purposes and operating it in discharge of its duties to the public. See also United States v. Carlin (1919) 259 Fed. 904. Contra: In Murray v. Wilson Distilling Company (1909) 213 U. S. 151, 53 L. Ed. 742, 29 Sup. Ct. Rep. 458, and in Cunningham v. Macon & Brunswick Railroad Company (1883) 109 U. S. 446, 27 L. Ed. 992, 3 Sup. Ct. Rep. 292 and 609, it was held that a suit could not be maintained against the objection of the state, even though the state was carrying on a private enterprise. 20 Columbia Law Review, 217.

[11] Supra, n. 2.

[12] In pursuance of the power to regulate commerce, the United States has built, without the intervention of a corporation, an interoceanic canal, and an Alaskan railroad. In the principal cases, Congress had two sources of constitutional authority at its disposal—the power to regulate commerce and the power to provide an Army and Navy. U. S. Const., Art. I § 8.

from those of the ordinary private corporation,[13] even as to governmental functions. This was the view of the court in the latter of the principal cases.[14] On the other hand, there is certainly merit in an argument that the right to assert the immunity from personal liability in the performance of governmental business should be the same when the agent of the government is a corporation as it is when it is an individual, particularly since the reason for the formation of the Emergency Fleet Corporation may well have had nothing to do with the rights of suitors to bring actions. This was evidently in the mind of the court in the former of the principal cases.[15] Which view will ultimately prevail is a question. That creating full liability commends itself to one's sense of justice. But assuming the liability exists, the future has many interesting problems in store for us. Can money appropriated by Congress be used to pay judgments against that corporation, or could it be put into bankruptcy in the event that Congress withholds appropriations? These and many other questions occur.

C. O. H.

DISQUALIFICATION OF JUDGES FOR INTEREST IN THE SUIT[1]—From the fundamental principle that one cannot be judge in his own case[2] springs the rule that judges are disqualified to act because of interest in the controversy.[3] Since the doctrine is founded on the right of every man to have his suit decided by an impartial tribunal, at common law the objection might be waived expressly or impliedly like any other rule for a party's benefit.[4]

In many states the subject is covered by statute, and although there is nothing in the language to indicate a legislative intention to change the common law rule, and no reason for the change has ever been given, the courts have injected by interpretation the consideration of public policy that did not appear before. Where a statute reads a judge "shall not preside," or "shall not participate," or "shall not sit," as in California,[5] with a very few

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[13] The Lake Monroe (1919) 250 U. S. 246, 39 Sup. Ct. Rep. 460, 8 California Law Review, 53.

[14] Supra, n. 2.

[15] Supra, n. 1.

[1] Scope of the note: the note covers the general questions of disqualification, and under the California Code of Civil Procedure, only sub-section 1 of § 170. Other notes with authorities collected 84 Am. Dec. 127, 10 Ann. Cas. 969, Ann. Cas. 1912A, 1072.

[2] Blackstone's Commentaries, Book iii, p. 299 n. (d); Hob. 87; Year Book M. 8 Hen. VI, 20; North Bloomfield G. & M. Co. v. Keyser (1881) 58 Cal. 315, 322.

[3] Dimes v. Grand Junction Canal (1852) 3 H. L. C. 758, 10 Eng. Rep. R. 301.

[4] 1 Freeman on Judgments, § 145. But there is no waiver for failure to object where the party could not have known of the bias. Bernhamer v. State (1890) 123 Ind. 577, 24 N. E. 509.

[5] Cal. Code Civ. Proc., § 170.